***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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**WRIT PETITION NO : 22439 of 2004**

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% 21.12.2004

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Between:

Meka Suryanarayana S/o.Naganna.

**... PETITIONER**

AND

The Regional Joint Commissioner, Endowments, Endowments Department, Visakhapatnam & two others.

**...RESPONDENTS**

! COUNSEL FOR THE PETITIOENR: MR.G.KRISHNA MURTHY

^ COUNSEL FOR THE RESPONDENTS: G.P.for Endowments

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

**WRIT PETITION NO : 22439 of 2004**

Between:

Meka Suryanarayana S/o.Naganna
Jegurupadu Village, Kadiam Mandal,
East Godavari Dist

**... PETITIONER**

AND

1 The Regional Jpint Commissioner Endowments,
Endowments Dept., Kakinada, East Godavai Dist.
2 The Assistant Commissioner of Endowments Endowments Dept,
Rajahmundry, East Godavari Dist.

3 The Executive Officer Sri Nagareswara Swamy Temple
Jegurupadu Village, Kadiam Mandal,
East Godavai Dist.

**...RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pleased to issue an appropriate writ order or direction more particularly one in the nature of Writ of Mandamus declaring the auction notification issued by the 3rd respondent on 22-11-2004, proposing to conduct auction in respect of the lands an extent of Ac.13-35 cents covered by SNo.342/2, 340,342/1 and 323/2 of Jegurupadu village Kadiam Mandal, E.G.Dist on 4-12-2004, is illegal, arbitrary, unconstitutional, and contrary to the provisions of Act 30-87 and amended Act 27/2002 and rules made thereunder, and consequently direct the respondents not to dispossess the petitioner from the above lands.

**Counsel for the Petitioner:MR.G.KRISHNA MURTHY**

**Counsel for the Respondents: GP FOR ENDOWMENTS**

**The Court made the following :**

***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY***

**W.P.NO.22439 OF 2004**

**ORDER:**

The petitioner is the cultivating tenant of Ac.13.35 cents of land, belonging to Sri Nagareswara Swamy Temple, Jegurupadu Village, Kadiam Mandal, East-Godavari District. The lease is said to have been granted to the petitioner in the year 1970. The petitioner was issued a notice dated 23-04-2003, intimating that the lease stood terminated, by virtue of the provisions of Section 82 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, as amended by Act 27 of 2002,

(hereinafter referred to as 'the Endowments Act'). Thereupon, the petitioner filed an application before the 2nd respondent to declare and recognize him as landless poor. Through his order dated

26-11-2004, the 2nd respondent rejected the claim of the petitioner. The Executive Officer of the temple, the 3rd respondent, issued a notification, dated 22-11-2004, proposing to auction the leasehold rights of the land. The petitioner challenges the same.

2. Learned counsel for the petitioner, Sri G. Krishna Murthy, submits that the petitioner holds only an extent of 30 cents of land in Sy.No.6/2, as owner, and as such, he was entitled to be declared as a landless poor person. Placing reliance upon a Circular, dated

04-06-2004, issued by the office of the Commissioner of Endowments, he submits that the petitioner ought to have been continued as lessee.

3. Learned Government Pleader for Endowments and learned Standing Counsel for the 3rd respondent, on the other hand, submit that the land held by an individual, as a lessee, or owner, it is required to be taken into account in deciding his status as landless poor, and in that view of the matter, the petitioner cannot be treated as landless poor. They also contend that the lease in favour of the petitioner stood terminated by virtue of Section 82 of the Endowments Act, and he has no right to continue in the possession of the land.

4. The petitioner was granted lease over an extent of Ac.13.35 cents of land, way back in the year 1970. On account of the applicability of the provisions of the A.P. (Andhra Area) Tenancy Act, 1956 as well as striking down of Section 82 of the Endowments Act, by this Court, the lease of the petitioner could not be terminated. It was in the recent past, that the Supreme Court upheld the validity of Section 82. Thereafter the provision was further amended, paving the way for cancellation of leases, in respect of agricultural lands, and incorporating measures to protect the interests of landless poor. The expression *'landless poor'* is defined under the explanation to Section 82, as under:

> "For the purpose of this sub-section "landless poor person" means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed two hundred and fifty rupees per mensum or three thousand

rupees per annum. For the purpose of computing the extent of land 0.404686 hectares (one acre) of wet land shall be equal to 0.809372 hectares (two acres) of dry land."

5. The Government framed Rules for taking steps in G.O.Ms.No.379, Rev (Endts.-I) Department, dated 11-03-2003, for the purpose of implementation of Section 82. Claims for being declared as landless poor, are required to be adjudicated by the Assistant Commissioner of Endowments, having jurisdiction over the area. An appeal is provided to the Regional Joint Commissioner against such orders.

6. From a perusal of the definition *'landless poor'*, it is evident that the land held by a person as lessee as well as owner, needs to be taken into account. It is not in dispute that the petitioner is a lessee over an extent of Ac.13.35 cents. Despite the same, the petitioner has chosen to file an application before the 2nd respondent, to declare him as landless poor. On the face of it, the submission of application was nothing, but misuse of process of law. The 2nd respondent has rightly rejected the claim. The plea of the petitioner that the land held by him as owner alone has to be taken into account, runs contrary to the very definition of the expression *'landless poor'*.

7. Once the claim of the petitioner was rejected, he has no right or basis to continue in the possession of the land. The temple was subjected to great loss for over a period of three decades, due to the unauthorized and illegal continuance of the petitioner. The 3rd respondent has taken steps to put the leasehold rights of the petitioner to auction. No exception can be taken to the same, and it is fully accords with the relevant provisions of law.

8. Learned counsel for the petitioner places reliance upon a Circular, dated 04-06-2004. The Circular deals with a representation said to have been made by A.P. Endowments Department Leaseholder Sangham. On an earlier occasion, instructions were issued by the Commissioner of Endowments through proceedings, dated 27-02-2004, requiring his subordinates to adhere to the guidelines contained in G.O.Ms.No.379, dated 11-03-2003, in the matter of conducting auction of leasehold rights of the endowment lands. In the present Circular, it is stated that, in view of the representation made by the Sangham, the instructions contained in proceedings dated 27-02-2004, are kept in abeyance.

9. To say the least, the directions contained in the Circular, dated 04-06-2004, are

contrary to the very spirit and letter of the Act and the Rules made thereunder. When a substantive provision is contained in Section 82, dealing with the cancellation of leases, in respect of agricultural lands, and the Government had framed Rules for giving effect to the same, it was totally improper on the part of the Commissioner to have issued any instructions to water down the same. It is on account of such steps, that thousands of acres of land belonging to temples is subjected to either encroachment or unauthorized continuance of tenants. It is rather surprising that the Commissioner has chosen to issue instructions, indirectly requiring his subordinates, not to implement the steps contemplated under G.O.Ms.No.379, dated 11-03-2003. This Court takes serious exception to the same, and disapproves of the manner in which the Commissioner intends the properties of the endowment institutions to be dealt with, and it is compelled to observe that every authority under the Act is under obligation to implement the provisions of that Act, and in particular, Section 82 and the Rules made thereunder, in their letter and spirit, and there is no room for the likes or dislikes of any authority, at any level, in the matter of implementation of the same. At any rate, most of the measures indicated therein are in relation to landless poor persons, and since the petitioner is not a landless poor person, the said Circular is hardly of any use to him.

10. The writ petition is dismissed. There shall be no order as to costs.

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**L. NARASIMHA REDDY, J.**

Dt. 21–12-2004.

*Note:*

*L.R. copy to be marked.*

*(B/O) KO*

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy, for his Lordship's kind perusal)

To

1 The Regional Jpint Commissioner Endowments,
Endowments Dept., Kakinada, East Godavai Dist.
2 The Assistant Commissioner of Endowments Endowments Dept,
Rajahmundry, East Godavari Dist.
3 The Executive Officer Sri Nagareswara Swamy Temple
Jegurupadu Village, Kadiam Mandal,
East Godavai Dist.

4 Two C.Cs to the Govt.Pleader for Endowments,

High Court building, Hyderabad (OUT)

5 Two C.Ds.

6 8 L.R.copies